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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/817,010      | 04/03/2004  | Gordon Walker Nugent |                     | 1590             |

7590 02/03/2009  
Gordon W. Nugent  
160 Rivergate Drive  
Wilton, CT 06897-3611

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| EXAMINER |
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VANAMAN, FRANK BENNETT

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3618

|           |               |
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| MAIL DATE | DELIVERY MODE |
|-----------|---------------|

02/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/817,010 | <b>Applicant(s)</b><br>NUGENT, GORDON WALKER |  |
|                              | <b>Examiner</b><br>Frank B. Vanaman  | <b>Art Unit</b><br>3618                      |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 92-103 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 92-103 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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| APPLICATION NO./<br>CONTROL NO. | FILING DATE | FIRST NAMED INVENTOR /<br>PATENT IN REEXAMINATION | ATTORNEY DOCKET NO. |
|---------------------------------|-------------|---|---------------------|
| 10817010                        | 4/3/04      | NUGENT, GORDON WALKER                             |                     |

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**EXAMINER**

Frank B. Vanaman

| ART UNIT | PAPER    |
|----------|----------|
| 3618     | 20090121 |

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

Attached is a copy of the Office Action mailed in September of 2008 and not received by applicant. The time period for reply is hereby restarted.

/Frank B Vanaman/  
Primary Examiner, Art Unit 3618

***Status of Application***

1. Applicant's amendment, filed June 25, 2008, has been entered in the application. Claims 92-103 are pending.

***Claim Rejections - 35 USC § 112***

2. Claims 92-95 and 100-103 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 92, lines 21-22 it is not entirely clear whether or not applicant is attempting to incorporate method limitations into an apparatus claim. In claim 92, lines 23-24, the relative terms "minimum" (related to work) and "maximum" (related to convenience and maneuverability) render the recitation unclear in that the use of the terms implies a comparison with a standard, however there is no comparative object or standard set forth. In claim 100, lines 9-10, it is not clear what limitations of "balanced" are and/or are not to be associated with "in the balanced manner of ferris-wheel seats". In claim 100, line 11, it is not clear whether the term "their support frame" is provided with a clear antecedent basis as the term is not the same as "telescoping frame" which is used elsewhere -- as such it is not clear if "their supporting frame" is the same frame as the previously recited telescoping frame or not.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 96-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seydel et al. (US 5,160,154) In view of Wu (US 5,201,540) and Raichlen (US 6,540,242). Seydel et al. teach a tall cart which may be utilized for the intended use as a shopping cart and which can accommodate a plurality of containers (90) which constitute bins or baskets having a deep-walled slot (95) in at least one wall; the containers connectable to the cart with a plurality of quick-attach and -detach locks

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forming retaining elements (20) constituted by slots, which interact with the containers to position a container wall (91, 93) between a locking projection (20, 21) and a tall spine (10); and a plurality of respective ledges forming support means (30) which may partially support an item not secured by the quick connect and -release locks, a lower most of (e.g., 45) which is located at a substantial height, the structure constructed of a light metal tubing (see col. 3, lines 62-68), the cart having attachments at least in the form of wheels (50) mounted on a leg (40) by quick release hub connectors (55, note col. 4, lines 37-41). Seydel et al. additionally teach that the tall cart may be arranged so that the locking portions (20, 21) are positioned at differing locations in alternate embodiments (compare figure 1a with figure 1b and figure 5)

The reference to Seydel et al. fails to teach a height-reducing means on the spine including a means for reducing the height of the spine. Wu teaches a cart having a spine portion (1, 2, 8, 9) divided into upper (1, 8, 9) and lower (2) portions connected by a locking hinge (33, 34, 35, figure 5) to allow selective folding of the frame, and the spine being separated into further first (9) and second (1) telescoping portion, wherein a telescoping lock (82, figure 6) is used to maintain an extended or retracted condition. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the spine of the cart taught by Seydel et al. with a lockingly telescoping and/or lockingly foldable connection as taught by Wu for the purpose of allowing the spine taught by Seydel et al. to be condensed into a more compact configuration when not in use.

Seydel et al. as modified by Wu fail to teach that the locking portions (20, 21) constitute quick-connect and quick-release means which may themselves be released. Initially, it is noted that Seydel et al. do, however, teach that the lock portions (20, 21) may be positioned in different locations on the spine. Raichlen teaches that it is well known to provide a cart having dual spine elements (20, 20) and a channel (14) with a locking upper connection device which may be mounted such that a lock (16, 19) is connected with a sliding block (15) which is slidably disposed on a channel portion (14) of the dual spine frame (20, 20) to allow variable positioning. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the

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locking portions (e.g., 20, 21) taught by Seydel et al., as modified by Wu, to include a block portion slidable upwardly and downwardly in a channel of a frame having at least two spines, as taught by Raichlen, for the purpose of allowing the locations of the locks to be varied, allowing the accommodation of different sized containers. Such a structure would result in a locked condition when the combined lock and block is lowered, and an unlocked condition when raised. Further, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a frame having dual spines as taught by Raichlen for the purpose of providing a more robust frame structure.

As regards the intended use recitations, the cart of Seydel et al. as modified by Wu and Raichlen is capable of being maneuvered into proximity with a surface bearing a container, such that a container may be transferred to the cart without its entire weight being accommodated by a user, and the combined cart is understood to be operable by an operator, woman or man, having the strength to operate the elements associated with the cart.

5. Claims 100-103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 5,595,395) in view of Wu (US 5,201,540). Wilson teaches a tall cart having a frame (12) which supports a plurality of merchandise containers (38, 48, 60) with a plurality of pin connections (36, 50, 62) so that they may be balanced, as best understood, in the "manner of ferris wheel seats" (compare figures 1, 3 and/or figures 4, 6). Wilson further teaches that the frame may be made of plastic or metal (col. 4, lines 24-27) and that the bins may be of a number of types including "conventional recycle type bins" (col. 5, lines 38-40).

The reference to Wilson fails to teach the pin mounts as being quick release type, however Wilson teaches an alternate embodiment where pivots (106) are provided on the cart to matingly engage with a recess (110) on the respective bins. As such, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the quick connect/release feature taught by the embodiment shown by Wilson at figures 4-6 with the frame and bin arrangement shown at figures 1-3 for the purpose of allowing the bins to be quickly removed in their entirety, for example to facilitate the

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quick changeover of materials carried in one bin for those carried in another. Wilson fails to specifically teach that the frame, optionally metal, is of a light alloy, however in the field of making carrying carts, low weight and high strength are well known to be desirable, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the frame from a light metallic alloy so as to provide a cart of reasonable strength without unduly increasing its weight. Wilson, whilst calling out 'conventional recycling' bins, fails to specifically describe them as being made from plastic, however, it is very well known that recycling bins may be made from plastic, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the bins taught by Wilson from plastic so as to provide a more resilient and long lasting container than, for example, one made from a cardboard.

The reference to Wilson fails to teach the frame as being telescopic and having plural telescope locks. Wu teaches a cart having a frame portion (1, 2, 8, 9) and being separated into a first (9) and second (1) telescoping portion, wherein a telescoping lock (82, figure 6) is used to maintain an extended or retracted condition. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the frame of the cart taught by Wilson with a lockingly telescoping connection as taught by Wu (e.g., by providing each member 12 taught by Wilson as two telescoping parts, and each with a respective telescope lock) for the purpose of allowing the frame portion taught by Wilson to be condensed into a more compact configuration when not in use.

### ***Allowable Subject Matter***

6. Claim 92, as best understood, would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

7. Claims 93-95, as best understood, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Comments***

8. Applicant's comments, filed with the amendment, have been carefully considered. As regards the rejection advanced against claims 92-95, the examiner agrees that the prior art previously applied, does not meet the claims as now amended. As regards claim 96, the previously applied prior art is deemed to meet the claim recitation, in that applicant has merely added "dual-spine" to modify the frame. Note that Raichlen may be seen to have what may be defined as a dual spine. As regards claim 100, note the reference to Wilson, now applied in direct response to applicant's amendment, with particular regard to the engagement of pivots 106 and openings 110 in the embodiment of figures 4-6. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant's comments concerning a "slow, ponderous, laborious chain" of events is noted, however such comment does not overcome the rejection, at least for the reason that applicant has provided no standard for the speed of operation, and applicant's specification provides no support for such a standard. Note that a user can perform the steps of connecting and disconnecting a burden or carrier from the structure of the cited references or a combination thereof at any desired speed.

### ***Conclusion***

9. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:



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Mail Stop \_\_\_\_\_

Commissioner for Patents

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Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**

**Primary Examiner**

**Art Unit 3618**

/Frank B Vanaman/

Primary Examiner, Art Unit 3618